

DOCKET NO. T-04248A-04-0239



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1 BEFORE THE ARIZONA CORPORATION COMMISSION

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3 IN THE MATTER OF THE APPLICATION) DOCKET NO.
 4 OF WWC LICENSE, LLC ("WESTERN) T-04248A-04-0239
 5 WIRELESS CORPORATION") FOR)
 6 DESIGNATION AS AN ELIGIBLE)
 7 TELECOMMUNICATIONS CARRIER AND)
 8 REDEFINITION OF RURAL TELEPHONE)
 9 COMPANY SERVICE AREA.) **PROCEDURAL**
 10 **CONFERENCE**

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12 At: Phoenix, Arizona

13 Date: March 10, 2005

14 Filed: **MAR 23 2005**

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17 **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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ARIZONA CORPORATION COMMISSION
HEARING DIVISION

1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before
3 the Arizona Corporation Commission, 1200 West
4 Washington Street, Phoenix, Arizona, commencing at
5 1:05 p.m. on the 10th day of March, 2005.

6
7 BEFORE: TEENA WOLFE, Administrative Law Judge

8 APPEARANCES:

9 For the Arizona Corporation Commission Staff:

10 TIMOTHY J. SABO
11 Staff Attorney, Legal Division
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 For Western Wireless:

15 ROSHKA, HEYMAN & DeWULF, PLC
16 By: Mr. Michael W. Patten
17 Suite 800
18 400 East Van Buren Street
19 Phoenix, Arizona 85004

20 For ALECA:

21 SNELL & WILMER, L.L.P.
22 By: Mr. Jeffrey W. Crockett
23 One Arizona Center
24 400 East Van Buren
25 Phoenix, Arizona 85004

MICHELE E. BALMER
Certified Court Reporter
Certificate No. 50489

1 ALJ WOLFE: Welcome to the Commission.

2 This is the time and place set for the
3 procedural conference set by the March 1, 2005
4 procedural order in the matter of the application of
5 WWC License, LLC, Western Wireless Corporation, for
6 designation as an eligible telecommunications carrier
7 and redefinition of rural telephone company service
8 area, Docket No. T-04248A-04-0239.

9 My name is Teena Wolfe, and I'm the
10 Administrative Law Judge assigned to this matter.

11 We'll start by taking appearances, beginning
12 with the Applicant.

13 MR. PATTEN: Michael Patten, Roshka, Heyman &
14 DeWulf, on behalf of the Applicant.

15 MR. CROCKETT: Jeff Crockett with Snell &
16 Wilmer on behalf of intervenor Arizona Local Exchange
17 Carriers Association.

18 ALJ WOLFE: Thank you.

19 MR. SABO: Tim Sabo for Staff, Your Honor.

20 ALJ WOLFE: This procedural conference was set
21 for the purpose of discussing the scope, scheduling,
22 and conduct of a hearing on the Western Wireless
23 application, because after Staff filed its Staff record
24 in this matter recommending approval subject to
25 conditions, Western Wireless filed a response

1 requesting modification to those conditions, and ALECA
2 filed a response requesting that the Commission require
3 further information and also modification of the
4 conditions recommended by Staff.

5 Is there any response to that, first, the
6 thought of having a hearing on the matter? Mr. Patten.

7 MR. PATTEN: I guess we're torn. I'm not sure
8 that we saw the need for a hearing per se. We thought
9 that Staff would respond to our comments, and that
10 probably would be enough information for Your Honor to
11 prepare the opinion, but you're obviously the person
12 drafting the opinion. So I don't think it was
13 contemplated from the beginning that we would have a
14 hearing. I'm not sure that anything has necessarily
15 changed to require it.

16 ALJ WOLFE: Okay. Mr. Crockett.

17 MR. CROCKETT: Your Honor, I would generally
18 agree with what Mr. Patten has said, although I would
19 also note that the FCC has recently adopted additional
20 requirements that apply to those seeking designation as
21 an eligible telecommunications carrier from the FCC.

22 And while those requirements -- while we
23 haven't seen the order yet, presumably those
24 requirements are not binding on the state commissions,
25 but I think they would be instructive in this case, and

1 I think they should be subject to review in this docket
2 either through filing of comments or through a hearing.

3 ALJ WOLFE: Okay. Mr. Sabo, do you have a
4 response to those comments?

5 MR. SABO: Yes. With regard to the hearing, we
6 would agree that we don't believe that a hearing is
7 necessary. Prior to the FCC development that
8 Mr. Crockett was referring to, we were just planning on
9 filing some type of response to Mr. Patten's filing,
10 and then we were figuring that that would be
11 sufficient.

12 With regard to the FCC action, Mr. Crockett
13 notes that on February 28, 2005, the FCC released a
14 press release saying that they have adopted a new
15 order. Unfortunately, as you know, they have this
16 practice of adopting orders and then not actually
17 releasing the text for some time.

18 I was just up verifying that the order is not
19 out, and I was unable to locate it anywhere on the
20 FCC's website or using their electronic database. So
21 as of, you know, three minutes ago, it's not out yet.
22 We don't know when it is going to be out. We would
23 want to review it and believe it's appropriate that
24 Staff review that and see how it is applicable to this
25 case.

1 In particular, the FCC seems to have adopted
2 several additional requirements on top of -- or
3 clarifying the requirements that they had in the
4 Virginia cellular order, and we would need some
5 additional time once the order comes out to analyze
6 those and apply it to this case.

7 So our proposal would be in light of this new
8 development, that we would propose that Staff file a
9 supplemental Staff Report once the FCC order is out,
10 and then, of course, the other parties can respond to
11 it afterwards.

12 ALJ WOLFE: Mr. Patten, would you like to
13 respond?

14 MR. PATTEN: Yes, Your Honor. We agree that,
15 yes, the FCC order may have some potential guidance in
16 it. But I would note that the Commission has applied
17 factors above and beyond what the FCC has applied to
18 ETC in terms of reporting and other things like that.
19 We are optimistic that the Commission's analysis
20 already covered perhaps some of the new things that the
21 FCC would require of itself.

22 We would agree with Mr. Crockett that the FCC's
23 order is not binding regardless. I think the concept
24 of a Staff Report addressing the FCC order, as well as
25 our proposed clarification to the modifications to the

1 conditions, would be appropriate, and, you know,
2 comments on that report by the applicant and by ALECA.
3 And, again, I don't necessarily see the need for a
4 hearing on the matter even with that process.

5 ALJ WOLFE: Mr. Crockett, do you want to
6 respond?

7 MR. CROCKETT: I think that would be fine, Your
8 Honor. I don't know that ALECA sees the need to have a
9 hearing. But we would like to look at the order,
10 obviously, when it comes out, and we would like to see
11 a supplemental Staff Report.

12 And presumably this could be addressed without
13 a hearing, although I would like to leave a foot
14 partially in the door, if I could, depending on what
15 the order looks like when we see it.

16 ALJ WOLFE: Okay. So after the order comes
17 out, you would still request a hearing if the order
18 wasn't what you wanted?

19 MR. CROCKETT: Well, that's what I would like,
20 Your Honor.

21 ALJ WOLFE: Okay.

22 MR. CROCKETT: That's a possibility. But, you
23 know, we certainly don't ever want to delay this
24 process. And I think what's been outlined by Mr. Sabo
25 is acceptable to us. I just it's hard without knowing

1 what the detail of the order looks like to say we would
2 never want to have a hearing on it, especially if it
3 goes very far toward making recommendations regarding
4 the states and what the states ought to do with these
5 applications.

6 ALJ WOLFE: I see. You were talking about the
7 FCC order, not a proposed order for this Commission.

8 MR. CROCKETT: No, no. Not a proposed order.

9 ALJ WOLFE: I was a little confused there.
10 Sorry.

11 MR. CROCKETT: No. I'm sorry. The FCC order.

12 MR. SABO: Your Honor, it's our understanding
13 that the FCC order, as yet unseen by anyone, is
14 intended -- based on the press release anyway, is
15 intended to provide further guidance to the states in
16 the same way that the Virginia cellular order was
17 intended to guide the states on how to make ETC
18 determinations.

19 And certainly, I think, the Commission found
20 that it was appropriate to give considerable weight to
21 what the FCC was saying since it's a federal fund
22 ultimately administered by the FCC. So we would be
23 very interested in seeing what the order, in fact, says
24 and believe that, you know, we would probably give
25 considerable weight to it.

1 ALJ WOLFE: Okay. Well, I certainly don't want
2 to have a hearing if the parties just really believe
3 that an order based on the pleadings would be
4 appropriate. I just want to provide parties the
5 opportunity to rebut the other parties, if necessary.

6 So I guess the first step would be, since there
7 is this new FCC order out, which I wasn't aware of,
8 just to go ahead and have Staff file an amendment to
9 its Staff Report or a supplemental Staff Report. And
10 then following that, if the parties want to respond to
11 that again on the record, then it would open it up to
12 more proceedings.

13 How do you feel about that, Mr. Patten? If the
14 supplemental Staff Report addressed your concerns
15 raised in your response to the Staff Report as well as
16 the FCC order, would you request another opportunity to
17 respond?

18 MR. PATTEN: I think, Your Honor, what would
19 make sense is to set a time frame, you know, that Staff
20 produces a supplemental report two weeks or something
21 after the FCC order is out. I know they've already
22 done work on our proposed modifications to the
23 conditions, so it would really be focused just on the
24 FCC report. And then have the parties submit something
25 a week or two after that commenting or saying what the

1 Staff has proposed is fine or whatever. I think that
2 probably would suffice.

3 ALJ WOLFE: Okay.

4 MR. PATTEN: Again, one of our concerns is the
5 longer this takes to get ETC status, the longer Arizona
6 goes without being able to sort of recapture some of
7 the FUSF funds that are being paid by Arizona citizens
8 now but they're not fully recapturing them.

9 ALJ WOLFE: Okay. Mr. Crockett, does that
10 procedural schedule sound like the way that you were
11 envisioning it?

12 MR. CROCKETT: That sounds workable to me. I
13 mean, Mr. Patten mentioned before we went on the record
14 that one option was -- to give you another option --
15 would be to schedule a procedural conference after the
16 order comes out or perhaps after the supplemental Staff
17 Report is issued to find out if there's a need to have
18 a hearing at that point in time.

19 And if there's not, then we could file
20 comments, the parties could file comments on the Staff
21 Report, and we would be done. Or if there's a need,
22 depending on how extensive the FCC order is, if there's
23 a need to explore some of these things like we did in
24 the ALLTEL docket with the Virginia cellular order, we
25 could do that through a hearing process.

1 ALJ WOLFE: That sounds reasonable to me to
2 schedule a procedural conference following the filing
3 of the supplemental Staff Report, and then we'll find
4 out whether the parties want to respond or if there's a
5 need to respond. And then I'll know more, too, at that
6 time whether I think that a hearing is needed.

7 MR. PATTEN: Your Honor, I said two weeks after
8 the FCC order came out. I don't know what Staff would
9 like. I mean, obviously, we would like it sooner
10 rather than later. But not knowing Staff's workload, I
11 certainly don't want to demand two weeks, but we would
12 certainly like a shorter period of time, and I would
13 defer to Staff.

14 ALJ WOLFE: I was certainly going to ask Staff
15 when they thought that they could have a supplemental
16 Staff Report filed.

17 MR. SABO: Your Honor, we're certainly
18 sensitive to the desire of the Applicant to move this
19 along, and we do believe it is appropriate to act
20 expeditiously.

21 All that being said, given the unknown nature
22 of what exactly is in the order, as well as our
23 existing workload, we would be more comfortable with
24 something in the area of 30 days after the FCC order.

25 ALJ WOLFE: Is that acceptable to the parties?

1 MR. CROCKETT: Yes, Your Honor.

2 MR. PATTEN: If we're not going to have a
3 hearing, I think that would be acceptable.

4 ALJ WOLFE: And we don't know when the order
5 will be available, but it should be in the next few
6 days, I would imagine.

7 MR. SABO: Your Honor, we would hope that, but
8 the FCC doesn't really have a consistent timetable of
9 putting the orders out after they do the public meeting
10 voting on them. The most infamous example of that
11 would be the order on the TRO, which came out, I think,
12 nine months after the Commission voted on it. We're
13 not expecting it to be that long, but we really don't
14 know how long it's going to be.

15 ALJ WOLFE: Okay. What I can do, then, is
16 always leave it open for the parties to request a
17 procedural conference if something happens where the
18 FCC order is delayed for a long period of time. We can
19 certainly get back together and have a procedural
20 conference, either in person or telephonically, to
21 discuss where to go from there.

22 But at this time, I can also check and see when
23 the order comes out, so I'll have a better idea. But
24 we'll just expect Staff to file a Staff Report promptly
25 within 30 days after the FCC order becomes available.

1 And then I'll schedule a procedural conference very
2 shortly following as soon as the Staff Report is
3 docketed.

4 MR. SABO: If it's helpful, I believe the order
5 number for the order is available, and if my
6 recollection is correct it is FCC 05-46.

7 ALJ WOLFE: Thank you. Is there anything
8 further? Any more response?

9 MR. PATTEN: No. In terms of not delaying this
10 further, I guess once the FCC order is out, we can
11 provide notice to Your Honor, and then perhaps you
12 could set a procedural conference approximately a
13 couple or three days after the Staff Report would be
14 due, and that way we don't have another period of time.

15 ALJ WOLFE: That's fine. You could contact the
16 Hearing Division just to let us know that, in case I
17 forget to check it and find out. So there's no problem
18 with that. Just call the Hearing Division and let
19 someone know, and then I'll get a procedural order out
20 setting a procedural conference for a few days
21 following the 30-day deadline for the Staff Report.


22 Anything further? Thank you for your
23 attendance today. We're adjourned.

24 (The Procedural Conference concluded at
25 1:20 p.m.)

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
4
5

6 I, MICHELE E. BALMER, Certified Court Reporter
7 No. 50489 for the State of Arizona, do hereby certify
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10 the foregoing matter, all done to the best of my skill
11 and ability.
12

13 WITNESS my hand this 20th day of March, 2005.
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18 Certified Court Reporter
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